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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/549,398	06/19/2006	Eldad Torbati	64030(52398)	6381

21874 7590 04/03/2009

EDWARDS ANGELL PALMER & DODGE LLP
P.O. BOX 55874
BOSTON, MA 02205

EXAMINER	
NGUYEN, HIEN NGOC	

ART UNIT	PAPER NUMBER
3768	

MAIL DATE	DELIVERY MODE
04/03/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/549,398	TORBATI, ELDAD	
	Examiner	Art Unit	
	HIEN NGUYEN	3768	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *19 June 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-83* is/are pending in the application.

4a) Of the above claim(s) *83* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-82* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *13 September 2005* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *01/09/2006, 09/13/2005*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group 1, claims 1-82, drawn to a device and a method for reducing body perimeter at a region of treatment.

Group 2, claim 83, drawn to a method of measuring and recording a region of treatment.

The inventions listed as Groups 1 and 2 do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: The method in Group 2 can use a different device such as a digital pressure with build-in ruler to measure and record the height of a region of treatment.

During a telephone conversation with Mr. Brian Gaff on Tuesday 12/16/08 a provisional election was made without traverse to prosecute the invention of Group 1, claims 1-82. Affirmation of this election must be made by applicant in replying to this Office action. Claim 83 withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

The examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and the product claims are subsequently found allowable, withdrawn process claims that depend from or otherwise require all the limitations of the allowable product claim will be considered for rejoinder. All claims directed to a nonelected process invention must require all the limitations of an allowable product claim for that process invention to be rejoined.

In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103 and 112. Until all claims to the elected product are found allowable, an otherwise proper restriction requirement between product claims and process claims may be maintained. Withdrawn process claims that are not commensurate in scope with an allowable product claim will not be rejoined. See MPEP § 821.04(b). Additionally, in order to retain the right to rejoinder in accordance with the above policy, applicant is advised that the process claims should be amended during prosecution to require the limitations of the product claims. **Failure to do so may result**

in a loss of the right to rejoinder. Further, note that the prohibition against double patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 37 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. "A rate of change of a variation of an operational wavelength of said ultrasound apparatus is inversely proportional to a rate of change of a variation of said electrical stimulation apparatus operational frequency, a variation of an intensity of said electrical stimulation and a pattern variation of said electrical stimulation." Examiner does not understand how a rate of change of a variation of an operational wavelength of ultrasound apparatus can be inversely proportional to a rate of change of a variation of pattern variation of electrical stimulation? Operational wavelength is a signal than can increase or decrease. Pattern variation consists of changing the stimulation technique during a treatment session. How can a stimulation technique be inversely proportional to a signal? Appropriate correction is required.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 1-10, 13, 19-29, 40, 43-51, 54, 60-70 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 1,219,278 A2 (no designation of the inventor).

Regarding claims 1-10, 13, 19-29 and 40 EP 1,219,278 A2 discloses:

- a treatment system for reducing body perimeter at a region of treatment using an ultrasound apparatus and exerting pressure to the region of treatment; (see [0009-0015]). EP 1,219,278 A2 discloses a massaging system. The messaging system always applies pressure to the region of treatment.
- a treatment system for reducing or eliminating cellulite; (see [0019]).
- a treatment system for reducing body fat; (see abstract and [0019]). Reshaping of the body and reducing volume is reducing body fat. When massaging the body fat in the massaging area is being reduced.
- a treatment system used for regions of the body such as legs, thighs, stomach, etc; (see [0009-0015] and Fig. 1-3). It can be applied to any skin on the body.
- a treatment system for used to reduce or eliminate stretch mark. (see [0002-0005]).

- a pressure exertion apparatus for applying pressure exertion has a ultrasound transducer head; (see [0012]). It is inherent the apparatus must have a transducer to converge electrical energy to ultrasound energy.
- a transducer head is used for providing a messaging action to the area of treatment; (see [0012] and [0013]). Suction is part of the massaging process.
- a processor for controlling the operation of the device; (see [0018]).
- treatment system is capable of operating at various time period and can varied wavelength over time because the system has a processor that control the setting of the wavelength and operational time.
- a pressure exertion apparatus for applying pressure exertion that is use for mechanical massaging; (see abstract, [0012] and [0013]). The vacuum pump and the suction are used for mechanical massaging.

Regarding claims 43-51, the system in claim 1-10 perform the methods in claims 43-51 therefore it is rejected for the same reason.

Regarding claim 54, the system in claim 13 performs the methods in claims 54 therefore it is rejected for the same reason.

Regarding claims 60-70, the system in claim 19-29 perform the methods in claims 60-70 therefore it is rejected for the same reason.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 11-12 and 14-18, 30-32, 35-36, 38, 52-53, 55-59, 71-73, 76-77 and 79-80 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 1,219,278 A2 (no designation of the inventor) in view of Ella et al. (US 2004/0260209).

Regarding claims 11-12 and 14-18, EP 1,219,278 A2 does not disclose an operational frequency and intensity of an ultrasound apparatus. However, Ella in the same field of endeavor discloses:

- ultrasound apparatus operates at frequency of 1-5 MHz, intensity of 1 to 3W/cm^2 for use in skin massage, reducing body fat and cellulites; (see [0020-0022]).

It would have been obvious to one ordinary skill in the art at the time of the invention to modify the system disclose by EP 1,219,278 A2 to operate at a frequency of 1-5 MHz and intensity of 1 to 3W/cm^2 as taught by Ella because the frequency range of 1 to 5 MHz and intensity of 1 to 3W/cm^2 is a safety standard used for massaging and reducing body fat and cellulites. Different region of skin has a specific safety standard for frequency range and intensity. Frequency range of 1 to 5 MHz and intensity 1 to 3W/cm^2 are standard that cover the whole body.

Regarding claims 30-32 and 35-36, EP 1,219,278 A2 discloses substantially all claim limitations set forth in claim 23. However, EP 1,219,278 A2 does not disclose an electrical stimulation apparatus for providing electrical stimulation to muscles surrounding the area of treatment. Ella discloses:

- an electrical stimulation apparatus for providing electrical stimulation to muscles surrounding the area of treatment; (see [0225] and [0227]).

It would have been obvious to one ordinary skill in the art at the time of the invention to modify EP 1,219,278 A2 system to include an electrical stimulation apparatus for providing electrical stimulation to muscles surrounding the area of treatment as taught by Ella because electrical stimulation provide stimulation to muscles surrounding the area of treatment. Electrical stimulation is another technique use to treat muscle and skin.

Regarding claim 38, Ella discloses:

- a gel and an ultrasound apparatus are use on an area of treatment to reduce friction between ultrasound apparatus and the skin; (Ella [0020]).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify EP 1,219,278 A2 system to use a gel as taught by Ella because using the gel on the skin would reduce the friction between the ultrasound apparatus and patient's skin to prevent pain to the patient cause by friction.

Regarding claims 52-53, the system in claims 11-12 perform the method in claims 52-53 therefore it is rejected for the same reason.

Regarding claims 55-59, the system in claims 14-18 perform the method in claims 55-59 therefore it is rejected for the same reason.

Regarding claims 71-73, the system in claims 30-32 perform the method in claims 71-73 therefore it is rejected for the same reason.

Regarding claims 76-77, the system in claims 35-36 perform the method in claims 76-77 therefore it is rejected for the same reason.

Regarding claims 79-80, the system in claims 25, 27-28, 30 and 38 perform the method in claims 79-80 therefore it is rejected for the same reason.

5. Claims 33-34, 37, 74-75 and 78 is rejected under 35 U.S.C. 103(a) as being unpatentable over EP 1,219,278 A2 (no designation of the inventor), in view of Ella et al. (US 2004/0260209) and further in view of Hansjurgens (US 5,573,552).

Regarding claims 33-34 and 37 EP 1,219,278 A2 and Ella disclose substantially all claim limitations set forth in claim 30. However, they do not disclose a stimulation technique called MF stimulation. Hansjurgens in the same field of endeavor discloses:

- a system uses MF stimulation for electrotherapy of the treatment area such as muscle and skin for cells locate in a deeper region; (see col. 2, lines 57-67, col. 5, lines 10-20 and abstract). The variation of wavelength is always inversely proportional to the variation in frequency and intensity because it is a physical property.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify's EP 1,219,278 A2 system to use the MF stimulation technique as taught by Hansjurgens because it is one of many techniques use for muscle, skin stimulation and MF stimulation is a more effective way of treating cells that are located deeper inside a human body.

Regarding claims 74-75, the system in claims 33-34 performs the method in claims 74-75 therefore it is rejected for the same reason.

Regarding claim 78, the system in claim 37 performs the method in claim 78 therefore it is rejected for the same reason.

6. Claims 39 and 81 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 1,219,278 A2 (no designation of the inventor) in view of Cosman (US 6,405,572).

Regarding claims 39 and 81 EP 1,219,278 A2 discloses substantially all claim limitations set forth in claims 1 and 43. However, EP 1,219,278 A2 does not disclose a camera. Cosman disclose:

- a camera used for viewing and record the medical treatment; (see abstract and col. 19). The system in claim 39 performs the method in claim 81.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify EP 1,219,278 A2 system to include a camera use for viewing and recording the medical treatment as taught by Cosman because with a camera operator can view and record the treatment.

7. Claim 82 is rejected under 35 U.S.C. 103(a) as being unpatentable over EP 1,219,278 A2 (no designation of the inventor) in view of Ella et al. (US 2004/0260209) and further in view of Cosman (US 6,405,572).

Regarding claims 82, EP 1,219,278 A2 and Ella discloses substantially all claim limitations set forth in claim 80. However, they do not disclose a camera. Cosman disclose:

- a camera used for viewing and record the medical treatment; (see abstract and col. 19).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify EP 1,219,278 A2 system to include a camera use for viewing and recording the medical treatment as taught by Cosman because with a camera operator can view and record the treatment.

8. Claims 41-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 1,219,278 A2 (no designation of the inventor) in view of Lia et al. (US 2004/0019286).

Regarding claims 41-42, EP 1,219,278 A2 disclose substantially all claim limitations set forth in claim 1. However, this patent does not disclose a measuring apparatus and a pressure gauge. Lia discloses:

- a measuring apparatus and a pressure gauge for measuring the pressure; (see [0014-0016]).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify EP 1,219,278 A2 system to include a measuring apparatus and a pressure gauge for measuring pressure as taught by Lia because the system applies pressure during a massage and the measuring apparatus and pressure gauge allow the system to measure the applied pressure.

Conclusion

These are prior arts use in rejection: EP 1,219,278 A2; US 2004/0260209; US 5,573,552; US 2004/0019286; US 6,405,572.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. 2002/0193831; US 6,517,499; and US 2003/0069618.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HIEN NGUYEN whose telephone number is (571)270-7031. The examiner can normally be reached on 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Long Le can be reached on (571)272-0823. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/H. N./
Examiner, Art Unit 3768

/Long V Le/
Supervisory Patent Examiner, Art Unit 3768